

HLD-104 (April 2008)

April 30, 2008

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08-1629

GABRIEL I. PITTMAN

v.

KENNETH KYLER, ET AL.

(E.D. PA Civ. No. 02-cv-2825)

Present: **SCIRICA, Chief Judge, ALDISERT and GARTH, Circuit Judges.**

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) Appellant's supplemental petition in the above-captioned case.

Respectfully,

Clerk

MMW/SB/ww/isc

ORDER

Appellant's request for a certificate of appealability is denied. Fed. R. Civ. P. Rule 60(b) states that a motion to vacate a judgment "shall be made within a reasonable time, and . . . not more than one year after the judgment, order, or proceeding was entered or taken." The District Court denied appellant's petition for writ of habeas corpus on November 28, 2003. Appellant did not file his motion to vacate the judgment until October 31, 2007, almost four years later. Jurists of reason would not debate that the District Court did not abuse its discretion in determining that appellant was not entitled to relief. Pridgen v. Shannon, 380 F.3d 721, 725 (3d Cir. 2004).



A True Copy

Marcia M. Waldron

Marcia M. Waldron, Clerk

Certified order issued in lieu of mandate.

By the Court,

/s/ Anthony J. Scirica

Chief Judge

Dated: May 28, 2008

ISC/cc: Gabriel I. Pittman

David J. Mussel, Esq.

FILED
MAY 28 2008
MICHAEL E. KUNZ, Clerk
By _____
Dep. Clerk